



# IN HINDU LAW, THE LEGAL STATUS OF CHILD MARRIAGE

Unnatiben Janakkumar Acharya

Research Scholar, Sardar Patel University, V.V.Nagar, Anand, Gujarat, India.

## ABSTRACT

The heinous practise of child marriage has existed in India since the Middle Ages. The validity of child marriage has even been acknowledged by parliamentarians. Personal laws are the rules that regulate marriage. Section 5 of the Hindu Marriage Act defines what constitutes a legal marriage. According to Section 5(iii) of the Act, the age of marriage is one of the most important requirements for a legal marriage. According to the clause, the bride is 18 years old and the groom is 21 years old. People, according to the researcher, do not strictly stick to the age criterion. It has been given more weight than other laws because it is a personal law. Because precedents suggest that child marriage does not fall within the Hindu Marriage Act's sections 11 and 12. Furthermore, even though the validity of the child's marriage is disputed, it is punishable under the Act. As a result, the researcher concludes that child marriage should be evaluated in light of the welfare of the children.

**KEYWORDS:** Hindu Law, Child, Marriage, Legislation.

## INTRODUCTION:

Child marriage has predominated in human history from the beginning of civilization in early AD 700, and before that, young men and women recognised a liberal concept of love and freely picked a mate under the concept of romantic partnership.

Various changes in social organisation happened as states increased in power during the mediaeval period. People's lifestyles and opinions in India are shifting from simple to complex as a result of convoluted political institutions and societal advancements, particularly when it comes to the concept of liberty. As a result, this woman lost her rights and was compelled to observe the rules and the code of behaviour, in addition to facing family discipline. Young ladies are regarded to be irrational in love, so their parents marry them off when they are young, before they become entangled in scandals. Children as young as 12 are married as a result of these practises, increasing the danger of child marriage.

As a result of the high infant mortality rate, which wrecked havoc on children, this belief gave rise to the practise of "bal viah" [child marriage].

As a result, the goal of this essay is to evaluate child marriage in India objectively, to determine its benefits and downsides, and to offer legal remedies that are acceptable for the current social structure.

## THE SIGNIFICANCE OF MARRIAGE:

Marriage was a sacrament, a union, an indissoluble union of flesh with flesh, born with born to be continued even in the next life, according to Tikait Munmahinti v. Basant Kumar. According to Hindu traditions, a man does not have a material presence until he marries. The only half of a guy is himself. As a result, he is not fully born until he marries, and only then does he become whole.

Marriage in APASTHAMBA was intended to be a vehicle for good deeds and the attainment of moksha. Marriage was an indissoluble relationship in MEDHATITHI, not a contract. It has been solemnised once and for all.

## CONDITIONS FOR MARRIAGE UNDER HINDU MARRIAGE ACT, 1955:

The conditions for a lawful marriage are outlined in Section 5 of Hindu Law. The following are the classifications:

- i. Monogamy
- ii. Soundness of mind
- iii. Age of marriage
- iv. Beyond prohibited degrees
- v. Beyond 'sapinda' relationship

5(iii) the third condition is that " the bridegroom has completed the age of 21 years and the bride age of 18 years at the time of the marriage ".

The age was raised to eighteen in 1978. Previously, the bride was 15 years old and the husband was 18 years old. Almost every legal system has permitted young individuals to marry, however the marriage age and the age of majority have varied. Girls have traditionally been allowed to marry between the ages of 13 and 16, and if they are under the age of majority, their guardian's agreement or concern is

necessary.

Raising the marriage age to prohibit child marriage was once fashionable all across the world. The Convention on Consent to Marriage, Minimum Age for Marriage, and Marriage Registration was ratified by the United Nations on December 12, 1962, in order to achieve the first purpose.

Despite our customs, the bride receives a gift, and her age has no influence on the validity of the marriage. According to Hindu Marriage Act of 1955, the bride must be at least 15 years old. Her guardian's agreement in marriage must be obtained if she is under the age of 18 (i.e., a minor). Because of a 1978 amendment to the Hindu Marriage Act, the bride's minimum age is now 18 years. As a result, guardianship in marriage is no longer an issue, and hence section 6 has been repealed. Although the Child Marriage Restraint (Amendment Act, 1978) increased these requirements to 18 for the bride and 21 for the groom, the law commission's 59th report concluded that "the popular understanding that the breach of that condition has no impact on the legitimacy of marriage" should be preserved.

The policy's purpose is to discourage child marriage, although it will have no effect on the validity of the marriage if it is adopted. That is, weddings performed against one's will are not void or voidable, but they are punishable under section 18 of the Hindu Marriage Act and the Child Marriage Restraint Act, 1929 (19 of 1929), both of which are designed to discourage child marriage.

The provisions of this Hindu marriage Act will be superseded by the requirements of section 3 of the Child Marriage Prohibition Act of 2006 (6 of 2007).

That is to say, child marriages are voidable at the discretion of the contracting party, but the Hindu Marriage Act, 1955, is a personal law in which the personal law takes precedence and is routinely ignored. Because the DOCTRINE OF FACTUM VALET recognised a marriage that took place in violation of the statute of emancipation. Some of the five marital conditions are required, while others are optional; therefore, if one is violated, it is justified under the concept of factum valet. This means that, despite the legal consequences, a child marriage was made formal with the guardian's approval. Despite the fact that there are numerous critics, the vacuum remains. The husband, as the natural guardian, may be granted custody of the minor bride if the marriage is not strictly void or voidable after it is solemnised in violation of the age limit. The marital partners have very limited options in any of these instances.

A remedy was introduced by the 1976 amending law, which stated that if a girl was married before the age of 15 and rejected the marriage before the age of 18, she might seek divorce on this basis, regardless of whether the marriage was consummated or not.

## JUDICIAL PRONOUNCEMENTS:

### Lajja v State:

The Delhi High court held that the PCMA prevails over personal laws.

### Independent Thought v. Union of India:

The Supreme Court of India ruled on the 11th of October 2017 that sexual intercourse or sexual actions between a man and his minor wife would constitute rape under Section 375 of the Indian Penal Code, 1860. Exception 2 to Section 375,

which reads as follows, has been struck down by the Court. To declare that sexual activity with a minor would constitute rape is to hold that sexual intercourse or sexual actions by a man with his own wife, the wife not being under 15 years of age, is not rape, and the exception will not apply in circumstances where the wife is between the ages of 15 and 18.

#### **P.Venkataraman v. State:**

The only consequence of child marriage is that those involved are subject to the penalties set forth in section 18 of the HMA, 1955, and a divorce judgement may be granted to the parties if they so desire.

#### **Krishna Pillai v. T.A Rajendran:**

The court was concerned about Section 9 of the Child Marriage Restraint Act, 1929, which stated that no court shall take notice of any infraction under the Act after one year from the date of the alleged breach. Because magisterial action in the case before it was beyond the period of one year from the date of commission of the offence, the three-judge bench held that the Magistrate was not competent to take cognizance when he did, in light of the bar under Section 9 of the Child Marriage Restraint Act, 1929.

Whether the relevant date for computing the period of limitation under Section 468 of the Code of Criminal Procedure in respect of a criminal complaint is the date on which a complaint is filed or the date on which an institution of prosecution is commenced, or if the relevant date is the date on which a Magistrate takes cognizance, appeared to be in dispute.

#### **CONCLUSION:**

Child marriage continued to exist in society despite the fact that numerous laws were created at various times to prevent the scourge of child brides and grooms. According to the law, child marriage is neither void nor voidable, and this is done in order to provide social protection to young girls who married at an early age. In the case of *V. Mallikarjunaiah v. H.C. Gowramma*, the court stated why child marriages are legal and why they are particularly exempt from the provisions of sections 11 and 12 of the Indian Penal Code.

According to the court's findings, "It was anticipated that such marriages would take place in the upper social strata; as a result, the legislature was reluctant to pass legislation that would result in a large number of girls and young women becoming essentially unmarried or impoverished. It's the only security a girl or woman has in such a situation, and if a marriage can be carelessly undone or is not recognised by the state, it will have devastating societal ramifications, which is the only reason this portion was explicitly deleted from sections 11 and 12 of the Hindu marriage act."

People from a variety of backgrounds have varying viewpoints on society. Overall, civilised society and social reformers today recognise the importance of a woman's health and social standing. However, despite the fact that we have explicit legislation designed to prohibit child marriage, we can still witness child marriages taking place because Section 5 (iii) of the Hindu Marriage Act has been liberalised.

It is necessary as a result, to remove the statute that permits child marriages, to impose heavy fines on the guardian who performs the ceremony, and to proclaim child marriages to be illegal. The application of any regulation with a new dimension will have an impact on a small group of people in the past, but our society will overcome this in order to put an end to the wicked behaviour.

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